IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-783

DONALD DEMARRIAS,

Petitioner,

v.

MARY POITRA, AS MOTHER AND SURVIVING PARENT OF RICHARD A. PRIMEAUX,

Respondent.

MOTION OF THE STANDING ROCK SIOUX TRIBE FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The Standing Rock Sioux Tribe of the Standing Rock Indian Reservation in North Dakota and South Dakota, moves for leave to file the accompanying brief, as *amicus curiae*, in opposition to the petition for a writ of certiorari. The respective attorneys for the petitioner and respondent have consented to the filing of a brief.

The Tribe has an interest of considerable importance and concern. The reservation is located in both North

Dakota and South Dakota. The Tribe has jurisdiction over about 4,800 Indians resident on the reservation, divided about 55% on the North Dakota side and 45% on the South Dakota side.

Under tribal law all Indian owners of motor vehicles are required to register their vehicle with the state and to pay the annual registration fee, of which one dollar is allocated to the Unsatisfied Judgment Fund. On rare occasion actions for damages may arise out of vehicular accidents on the reservation where the affected Indians are citizens of different states. The interest of the Tribe is that the federal courts should not deny reservation Indians the same access to the federal courts in diversity cases as is enjoyed by nonIndians on the reservation.

Respectfully submitted,

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March 1975

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The real party in interest is the Unsatisfied Judgment Fund represented by North Dakota through its Attorney General. All reservation Indians who own automobiles contribute to that fund each year out of their annual registration fee. (Pet. App. A11-12, fn. 10.) Nevertheless the State's objective is to eliminate all forums so that reservation Indians cannot participate in the benefits of the fund.*

*At oral argument below, the attorney for petitioner advised the court that he doubted whether a judgment of the tribal court would be recognized by the Unsatisfied Judgment Fund.

A recent decision of the Supreme Court of North Dakota closed the doors of the State courts to actions between Indians arising out of a motor accident on the reservation. *Gourneau v. Smith*, 207 N.W.2d 256 (1973). (Pet. App. A-3.) The district court's refusal to take diversity jurisdiction rested on a mechanical application of the doctrine of *Erie R. Co. v. Tompkins.* (Pet. App. A-3.) The court of appeals reversed on the ground that this was a case where the "interest of the federal court in its own procedures and policies dominates in the absence of identifiable state interests which are inextricably linked with the underlying substantive right." (Pet. App. A-6.) The court of appeals found no state interests such as would prevent the federal court from carrying out its obligation to exercise jurisdiction when the statutory requisites are satisfied. (Pet. App. A4-8.)

A. *There is no reason for granting the petition.* No question of general importance is presented. So far as we are aware, Standing Rock and Navajo are the only two reservations that extend into more than one state. The likelihood of diverse Indian citizens of the same reservation maintaining suit in the federal court is remote. Nothing in the cases suggests that diversity jurisdiction has been invoked on any significant scale by reservation Indians. The undersigned has been general counsel for the Tribe for almost twenty years and is not aware of any prior diversity case in that period between Indians of the Standing Rock reservation.

B. *There is no conflict among the courts of appeals.* The petitioner strains to place two ninth circuit cases in the same pocket as the case at bar to create a conflict

that does not exist. (Pet. 4-5.) Both ninth circuit cases affirmed the rejection of diversity jurisdiction. Neither was between Indians. Each was brought by a nonIndian against an Indian and each closely affected tribal rights. One involved a claim to tribal land and "necessarily involved Reservation affairs". The other sought to enjoin the tribal chairman from interfering with the tribal attorney's services under an approved contract with the tribe –, characterized as relating to "internal affairs" of the tribe. *Hot Oil Service, Inc. v. Hall,* 366 F.2d 295, 297 (C.A. 9, 1966); *Littell v. Nakai,* 344 F.2d 486, 490 (C.A. 9, 1965).

The case at bar involves no considerations of tribal land or internal affairs. There is no interference with tribal self-government. Here, an individual Indian simply seeks enforcement of a state-created substantive right (wrongful death statute and judgment fund). The decision below is another example of adherence to the fundamental rule "that federal courts have an obligation to exercise jurisdiction when the statutory requisites are satisfied." (Pet. App. A-7.)

The Tribe urges that the petition be denied.

Respectfully submitted,

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